IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.232 OF 2007
IN L.C. SUIT NO.1474 OF 2003

M/s. Rolex Marbles ...Appellant
Vs.
Municipal Corporation of Great Mumbai ...Respondents

Mr. M.U. Pandey, Advocate for the Appellant
Mr. J.J.Xavier, Advocate for the Respondent No.1
Mr. Jitendra Damania, Advocate for Respondent No.2

CORAM: SMT.ROSHAN DALVI,J.
DATED: 15TH JUNE, 2007

ORAL JUDGMENT.

1. This Appeal challenges the judgment of the learned Judge of the Bombay City Civil and Sessions Court dated 8th December, 2006. The Respondents have appeared and argued in support of the Judgment. The Appellant has produced the compilation of the documents along with the copies of entire evidence of the pleadings on record.

2. The ambit of this Appeal is extremely narrow. The legal right of the Appellant is essentially to be determined upon documentary evidence since it is with regard to title to an immovable property.

3. The Appellant claims to have taken on tenancy two distinct lands at two separate times.

4. The Respondent No.2 contends that there is no second tenancy and that the Appellant has trespassed upon the land outside the land tenanted to him on which he has put up a structure.

5. The Appellant's suit is for a declaration that the sanction of plan by Respondent No.1, the MMC, which is the Planning Authority, permitting the construction of the compound wall to Respondent No.2 is illegal and injunction against respondent No.2 not to dispossess him from the second larger open land and against constructing the compound wall within that portion. It is also for injunction restraining Respondent No.2 from interfering with the Appellant's business activities on the second larger open land.

6. The Appellant has therefore, to show his title, right and interest in respect of such open lands.

7. The Appellant's case can be decided only upon the documents produced and proved by the Appellant in support of his claim. The claim to immovable property and the legal right, title and interest claimed therein can only be by

production of documentary evidence with regard to such immovable property. The Appellant's claim for two lands of entirely different dimensions in the same area under two rent receipts has to be shown. For the reliefs claimed by the Appellant showing and proving his legal right by documents is the only requirement. On this basis the impugned Judgment has to be considered.

8. The Appellant admittedly took on rent one open premises admeasuring about 1500 sq. ft. from the Respondent No.2. The Appellant was issued a rent receipt in respect of that open land. That rent receipt is shown to be dated 13th November, 1984. It is for the months of August to November, 1984. It is for Rs.2000/- . Hence, for an open land of about 1500 sq. ft. rent at the rate of Rs.500/- per month came to be charged and paid. The Appellant has constructed a structure thereon. There is another lis between the parties in the Small Cause Court, Bombay under a Bombay Rent Act with regard to that structure, and with which the Civil Court as well as the Appeal from the Judgment of the Civil Court are not concerned.

9. The Appellant claims to have taken on tenancy another open land from the Respondent No.2. That is the suit premises. That aspect has been disputed. The Appellant

has to prove his claim of tenancy on that second open land. That land is admittedly still an open land. It admeasures 6925 sq. ft. The rent receipt shown by the Appellant's Advocate for that second larger open land is dated 31st January, 1986. It is for the month of November, 1985, for Rs.500/- . Hence, for the much larger open land also in the month of November, 1985 the rent which was charged was Rs.500/- per month, if the case of the Appellant has to be believed under that claim.

10. At the time the second open land was taken, the Appellant already had taken on tenancy the first open land on which a structure has, later has been constructed by the Appellant. Hence, the Appellant must have two rent receipts for the period immediately after he took on tenancy the second larger open land. The Appellant has not produced two separate rent receipts for the two separate lands tenanted by him from the Respondent no.2 for the month of November, 1985 or thereafter.

11. It is argued on behalf of the Appellant that after the first rent receipt was issued, in the later year a consolidated rent receipt for both the open lands came to be issued. Even if that be so, at the time the first rent receipt was issued for the second larger open land in November, 1985 there should

have been another rent receipt for the earlier open land. That has not been shown.

12. Strangely for both the open lands, one admeasuring about 1500 sq. ft. and another measuring about 6925 Sq. ft. the rent charged is the same. It is on this seminal basis that the Appellant's case for the second opon land has to be considered. It is conceded that for the structure on the first open land the lis is before the Rent Court and the suit filed by the Appellant in the Civil Court is not concerned with that. The Civil Court can only concern itself with the Appellant's claim for the open land which is the second larger open land.

13. The learned Judge has considered separately the rent receipts for the area of 1500 sq. ft. and 6925 sq. ft. Admittedly the Appellant has neither claimed, and the Civil Court cannot decide, rights about the structure. That part of the claim has only to be decided by the Small Cause Court, where the Suit is pending and which has been rightly observed by the learned trial Judge.

14. With regard to the Appellant's claim for the open land which is the second larger open land, the learned Judge has observed that the boundary wall which is to be constructed

should be as per the plan sanctioned by the Planning Authority for the City i.e. MMC, Respondent No.1. He has, therefore, observed that it is not necessary for him to consider that aspect. The Advocate for Respondent's No.1 states that the MMC will consider the merits of the title of Respondent No.2 for sanctioning the construction of the compound wall.

15. The large chunk of the evidence that has transpired is on the counterfoils of rent receipts called for and produced by the Respondent No.2, as Defendant no.2 in the Suit. The Appellant's Advocate seeks to lay emphasis upon the non-production of one such counterfoil receipt book. He contends that the counterfoil receipt book only for the year 1984-85 is not produced. He has taken me through the evidence showing various counterfoil receipt books shown to the witness on behalf of Respondent No.2 (examined as D.W.-1) in paragraphs 2,3 and 4 of the cross examination. The rent receipts have no particulars and the rent receipts as well as the copies (one in pink colour and one in white colour) are yet remaining in the counter bill receipt book. The Advocate for the Appellant contends that, therefore, the documents produced by Respondent No.2 are false, forged and fabricated. He complains such important evidence has not been considered by the learned trial Judge. The entire

emphasis upon such evidence is misplaced, misconceived and completely mischievous.

16. The only evidence required by the Appellant/Plaintiff who brings an action in law with regard to claiming a legal right to to an immovable property is to show his title. The Plaintiff in this case claims tenancy rights. He has, therefore, to produce an ambiguous document showing his tenancy. His case must rest on such document. In fact the entire evidence which relates to other counterfoil receipt books, for receipts which have not been issued is irrelevant and could have been disallowed by the trial Court. The learned trial Judge allowed the evidence to come on record to see its worth. Having found it not worthy to show the Plaintiff's title to the land claimed, for the reliefs sought, he has rightly not relied upon such evidence.

17. In the interest of justice the Appellant's Advocate has been allowed to show this Court the evidence which he considered material. The Appellant's Advocate argued that an adverse inference has to be drawn for non-production of the counterfoil receipt books for one year 1984-85 and for the production of the receipt along with its copy in the counterfoil receipt book. Even if adverse inference is drawn against the Respondent No.2 who is Defendant No.2 in the

Suit, the Appellant's claim of title to the Suit land has not seen. That is what the learned Judge has rightly considered. Having not shown his title, the Appellant is not entitled to the reliefs claimed. Upon considering the evidence relied upon by the Appellant's Advocate and the documents of the Appellant it is seen that the impugned Judgment refusing to grant reliefs and dismissing the Suit of the Appellant is correct.

18. The Appeal is dismissed.

19. The ad-interim reliefs granted pending the Appeal shall continue for a period of 6 weeks.

(SMT. ROSHAN DALVI, J.)